IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11585 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARAT ALIAS BHUKAMP DINESH BHAI PUROHIT

Versus

THE COMMISSIONER OF POLICE,

Appearance:

1. Special Civil Application No. 11585 of 2004

MS DR KACHHAVAH for Petitioner No. 1

MS HB PUNNI, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 20/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Kamlesh Kachhavah for ld. counsel Ms. DR Kachhavah for the petitioner detenu and

ld. AGP Ms. HB Punani for the respondent State. Affidavit-in-reply of Commissioner of Police, Ahmedabad City, tendered today by ld. AGP Ms. Punani is taken on record.

2. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention dated 16.06.2004 passed by the Commissioner of Police, Ahmedabad City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner detenu has been branded as "dangerous person" as defined under Sec.2(c) of the PASA Act.

3. The grounds for detention supplied to the detenu petitioner indicate for recording subjective satisfaction and passing the order of preventive detention, in reference to the Scheme of Sec.3 R/w 9(1) of the PASA Act, the detaining authority -Police Commissioner, Ahmedabad City has taken into account the fact of registration of seven different criminal offences punishable under The Indian Penal Code and mainly under Sec.379, 392 & 116 of the Indian Penal Code between 22.12.2003 to 24.03.2004 i.e. within a span of about 4 months. Details thereof are given in the tabular form in the grounds of detention conveyed to the petitioner detenu. It appears that he was arrested firstly in connection with the crime registered at Sr. No.6 in the table on 31.05.2004. After his arrest, he was falsely implicated in other six offences. The factual matrix emerging from the record helps the arguments of ld. counsel Mr. Kachhava that in the present case, at the most, it can be said that the activities of the detenu are prejudicial to the law and order situation and not to public order. It is true that the sponsoring authority has recorded statements of two independent witnesses claiming privilege under Sec.9(2) of the PASA Act on 05.06.2004 and 07.06.2004, those statements have been verified by the detaining authority on 15.06.2004. But the plain reading of the statements does not inspire any confidence and the same are found to have been recorded mechanically. Witness No.1 had narrated the incident allegedly occurred on 03.01.2004 and second witness had described the event that had occurred on 07.04.2004. Till the petitioner was arrested in all the crimes, none of these two witnesses have expressed their grievance before the police. So, for the sake of arguments even if it is accepted that the petitioner detenu is involved in all the criminal offences shown in the grounds of detention, even then it will be difficult for the Court

to hold that the activities of the petitioner detenu were prejudicial to the maintenance of public order. In support of his submission, ld. counsel has placed reliance on the ratio of the decision of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki v/s Police Commissioner, Surat & Ors., reported in 2000(1) GLR P.816, and in view of the ratio propounded in the said decision, the say of the ld. counsel for the petitioner shall have to be accepted. In the cited case, the detenu Ashok Jivraj was found involved in four different criminal cases and all these cases were offences against the body of a person. There were statements of independent witnesses against the detenu. By referring the decision of Mustakmiya Jabbarmiya Shaikh v/s M.M. Mehta, Commissioner of Police & Ors., reported in 1995(2) GLR 1268 (SC) and the ratio of the decision of Arun Ghosh v/s State of West Bengal, reported in 1970(1) SCC P.98, it has been observed that the stray incidents would not affect the public order and the order of detention cannot be passed in such cases. In the cited decision, this Court has also observed that "looking to the incident, the case falls under the maintenance of law and order and not the public order". In the same way, decision of the Division Bench of this Court in Spl.Cri. Application No. 1681/1992 decided on 03.03.1993, would also help the petitioner detenu. On facts, when court reaches to a conclusion that the case falls under the maintenance of law and order and not the public order, the subjective satisfaction arrived at by the detaining authority does not remain valid. Unless it is found that the case falls in the category of the activities adversely affecting the public order, the detaining authority has no jurisdiction to pass the order of detention. The order of detention under challenge, therefore, cannot sustain.

5. The next ground pressed into service by ld. counsel appearing for the detenu is that the order of detention under challenge is passed in hot haste and there was no need to pass such order because at the relevant date of passing of the order of detention, the petitioner detenu was in judicial custody. The sponsoring authority ought not to have placed even papers for obtaining the order of preventive detention. The grounds for passing preventive detention order conveyed to the detenu clearly reveal the fact of the petitioner detenu in judicial custody was very well there before the detaining authority and the same is reflected in the grounds. So, it is rightly argued by ld. counsel appearing for the petitioner that since the detenu was in judicial custody, the order of detention was not

warranted. This Court has turned down such orders in more than one cases and in support of submission, ld. counsel Mr. Mr.Kachhavah has placed reliance on the decision in the case of Amritlal & Ors. v/s Union Govt. through the Secretary, Ministry of Finance & Ors, reported in AIR 2000 SC 3675. I have gone through the cited decision and in my view, the ratio propounded in the cited decision would squarely apply to the facts of the present case and on this ground also, the impugned order of detention requires to be quashed and set aside.

6. In number of cases, this Court has consistently placed reliance on the ratio of the decision in the case of Amrutlal & Others v/s Union of India, Through Secretary, Ministry of Finance & Ors., AIR 2000 SC 3675 and has quashed the order of detention where detenu on the date of passing and/or execution of detention order, was either in judicial or in police custody. The reason that there is "likelihood to be released on bail", is different from "likelihood of his moving application for bail". In the cited decision, detenu was in custody. In these facts and circumstances, ratio of the decision in the case of Vinod Singh V/s District Magistrate, Dhanbad, AIR 1986 SC 2090 also would help the present petitioner-detenu. So, on this sole ground, impugned order of detention requires to be quashed.

7. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 16.06.2004, passed by the Police Commissioner, Ahmedabad City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]

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